

# ASSEMBLY, No. 4251

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 15, 2020

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Assemblyman ROBERT J. KARABINCHAK**

**District 18 (Middlesex)**

**Assemblywoman ANGELICA M. JIMENEZ**

**District 32 (Bergen and Hudson)**

**SYNOPSIS**

Provides certain civil and criminal immunities to diagnostic laboratories, and persons providing laboratory services, for diagnosis and testing performed in response to COVID-19 outbreak during public health emergency and state of emergency declared in Governor's Executive Order 103 of 2020.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 6/22/2020)

1 AN ACT concerning certain immunities for diagnostic laboratories  
2 and personnel and amending P.L.2020, c.18.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 1 of P.L.2020, c.18 is amended to read as follows:

8 1. a. The Legislature finds and declares:

9 This statement of legislative intent is made to establish clearly  
10 our intent because of the lack of committee hearings. This statement  
11 shall be made an official part of the record in establishing this  
12 Legislature’s intent.

13 It has been reported that this bill would grant immunity to all  
14 medical doctors and healthcare workers in New Jersey for all  
15 inpatient or outpatient procedures or any medical treatment  
16 rendered during the timeframe of the COVID-19 emergency. This is  
17 not an accurate statement.

18 The enactment of this bill is to ensure that there are no  
19 impediments to providing medical treatment related to the COVID-  
20 19 emergency and that all medical personnel supporting the  
21 COVID-19 response are granted immunity. However, medical care  
22 rendered in the ordinary course of medical practice does not provide  
23 the granting of immunity. For example, procedures performed by  
24 licensed medical professionals in their ordinary course of business,  
25 including orthopedic procedures, OB/GYN services, and necessary  
26 cardiological procedures.

27 It is not the Legislature’s intent to grant immunity for medical  
28 services, treatment and procedures that are unrelated to the COVID-  
29 19 emergency.

30 b. As used in this section:

31 “Health care facility” means any healthcare facility as defined in  
32 section 2 of P.L.2005, c.222 (C.26:13-2), any clinical laboratory  
33 certified under the federal Clinical Laboratory Improvement  
34 Amendments (“CLIA”) in section 353 of the Public Health Service  
35 Act (42 U.S.C. s.263a), and any modular field treatment facility and  
36 any other site designated by the Commissioner of Health for  
37 temporary use for the purpose of providing essential services in  
38 support of the State’s response to the outbreak of coronavirus  
39 disease during the public health emergency and state of emergency  
40 declared by the Governor in Executive Order 103 of 2020.

41 “Health care professional” means a physician, physician  
42 assistant, advanced practice nurse, registered nurse, licensed  
43 practical nurse, or other health care professional whose professional  
44 practice is regulated pursuant to Title 45 of the Revised Statutes or  
45 who is otherwise authorized to provide health care services in this

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 State, an emergency medical technician or mobile intensive care  
2 paramedic certified by the Commissioner of Health pursuant to  
3 Title 26 of the Revised Statutes or who is otherwise authorized to  
4 provide health care services in this State, **[and]** a radiologic  
5 technologist regulated pursuant to Title 26 of the Revised Statutes  
6 or who is otherwise authorized to provide health care services in  
7 this State, and any agent, officer, employee, servant, representative,  
8 or volunteer providing services associated with COVID-19 testing  
9 performed by a CLIA-certified diagnostic laboratory.

10 “Scarce critical resource allocation policy” means a policy,  
11 protocol or guidelines for the allocation by a health care facility, or  
12 a health care system that owns or operates more than one health  
13 care facility, of ventilators, intensive care unit beds, or other  
14 medical, diagnostic, laboratory, or testing resources or supplies that  
15 may be in limited supply and high demand during a public health  
16 emergency.

17 c. Notwithstanding the provisions of any law, rule, or  
18 regulation to the contrary:

19 (1) a health care professional shall not be liable for civil  
20 damages for injury or death alleged to have been sustained as a  
21 result of an act or omission by the health care professional in the  
22 course of providing medical, diagnostic, laboratory, or testing  
23 services in support of the State’s response to the outbreak of  
24 coronavirus disease during the public health emergency and state of  
25 emergency declared by the Governor in Executive Order 103 of  
26 2020; and (2) a health care facility or a health care system that owns  
27 or operates more than one health care facility shall not be liable for  
28 civil damages for injury or death alleged to have been sustained as a  
29 result of an act or omission by one or more of its agents, officers,  
30 employees, servants, representatives or volunteers, if, and to the  
31 extent, such agent, officer, employee, servant, representative or  
32 volunteer is immune from liability pursuant to paragraph (1) of this  
33 subsection.

34 Immunity shall also include any act or omission undertaken in  
35 good faith by a health care professional or healthcare facility or a  
36 health care system to support efforts to diagnose, test, or treat  
37 COVID-19 patients and to prevent the spread of COVID-19 during  
38 the public health emergency and state of emergency declared by the  
39 Governor in Executive Order 103 of 2020, including but not limited  
40 to engaging in telemedicine or telehealth, and diagnosing, testing,  
41 or treating patients outside the normal scope of the health care  
42 professional’s license or practice. The immunity granted pursuant to  
43 this subsection shall not apply to acts or omissions constituting a  
44 crime, actual fraud, actual malice, gross negligence, recklessness, or  
45 willful misconduct, and shall be retroactive to March 9, 2020.

46 d. Notwithstanding the provisions of any law, rule, or  
47 regulation to the contrary, a health care facility or a health care  
48 system that owns or operates more than one health care facility

1 shall not be criminally or civilly liable for damages for injury or  
2 death alleged to have been sustained as a result of an act or  
3 omission by the facility or system or one or more of the facility's or  
4 system's agents, officers, employees, servants, representatives or  
5 volunteers during the public health emergency and state of  
6 emergency declared by the Governor in Executive Order 103 of  
7 2020 in connection with the allocation of mechanical ventilators or  
8 other scarce medical, diagnostic, laboratory, or testing resources, if  
9 the health care facility or system adopts and adheres to a scarce  
10 critical resource allocation policy that at a minimum incorporates  
11 the core principles identified by the Commissioner of Health in an  
12 executive directive or administrative order, and the health care  
13 facility's or system's agents, officers, employees, servants,  
14 representatives and volunteers shall not be civilly or criminally  
15 liable for an injury caused by any act or omission pursuant to this  
16 subsection during the public health emergency and state of  
17 emergency declared by the Governor in Executive Order 103 of  
18 2020 pursuant to, and consistent with, such policy.

19 (cf: P.L.2020, c.18, s.1)

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21 2. This act shall take effect immediately and shall be  
22 retroactive to March 9, 2020.

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#### STATEMENT

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27 P.L.2020, c.18, enacted April 14, 2020, provides immunity from  
28 civil and criminal liability for certain claims alleging injury or death  
29 incurred during the public health emergency and state of emergency  
30 declared by the Governor's Executive Order 103 of 2020, issued on  
31 March 9, 2020. This bill would add clinical laboratories and persons  
32 performing services for such laboratories to the group of persons  
33 and entities granted such immunity.

34 P.L.2020, c.18:

35 Under the enactment, (1) a health care professional is not liable  
36 for civil damages for injury or death alleged to have been sustained  
37 as a result of an act or omission by the health care professional in  
38 the course of providing medical services in support of the State's  
39 response to the outbreak of coronavirus disease during the public  
40 health emergency and state of emergency declared by the Governor  
41 in Executive Order 103 of 2020; and (2) a health care facility or a  
42 health care system that owns or operates more than one health care  
43 facility is not liable for civil damages for injury or death alleged to  
44 have been sustained as a result of an act or omission by one or more  
45 of its agents, officers, employees, servants, representatives or  
46 volunteers, if, and to the extent, such agent, officer, employee,  
47 servant, representative or volunteer is immune from liability  
48 pursuant to the bill.

1 Immunity under P.L.2020, c.18 also includes any act or omission  
2 undertaken in good faith by a health care professional or healthcare  
3 facility or health care system to support efforts to treat COVID-19  
4 patients and to prevent the spread of COVID-19, including but not  
5 limited to engaging in telemedicine or telehealth, and diagnosing or  
6 treating patients outside the normal scope of the health care  
7 professional’s license or practice. The immunity does not apply to  
8 acts or omissions constituting a crime, actual fraud, actual malice,  
9 gross negligence, recklessness, or willful misconduct. The  
10 enactment is retroactive to March 9, 2020, the date the Governor  
11 issued Executive Order 103 of 2020.

12 This bill:

13 Under this bill, the definition of “health care facility” in  
14 P.L.2020, c.18 would be expanded to include any clinical laboratory  
15 certified under the federal Clinical Laboratory Improvement  
16 Amendments (“CLIA”) in section 353 of the Public Health Service  
17 Act (42 U.S.C. s.263a), and the definition of “health care  
18 professional” would be expanded to include any agent, officer,  
19 employee, servant, representative, or volunteer providing services  
20 associated with COVID-19 testing performed by a CLIA-certified  
21 diagnostic laboratory.

22 In addition, the bill expands the term “medical resources or  
23 supplies” in the enactment to “medical, *diagnostic, laboratory, or*  
24 *testing* resources or supplies”; expands the term “medical services”  
25 to “medical, *diagnostic, laboratory, or testing* services”; and  
26 expands the term “treat” or “treating” to include *diagnosis and*  
27 *testing*.

28 The bill would take effect immediately and, like P.L.2020, c.18,  
29 be retroactive to March 9, 2020.